

DEPARTMENT OF
ATTORNEY GENERAL

M E M O R A N D U M

January 30, 2009

TO: Michigan Supreme Court Clerk
P.O. Box 30052, Lansing, MI 48909

FROM: Rebekah Mason Visconti,
Division Chief
Children & Youth Services Division

RE: ADM File No. 2008-29

Upon careful review of proposed Michigan Court Rule 3.979, the Department of Attorney General suggests the following amendments:

-**MCR 3.979(A)(3)** outlines the guardianship procedure for children who are permanent wards of the court. As it is currently written, this subsection provides, in part, that "consent of the MCI superintendent must be filed with the court no later than 28 days after the permanency planning hearing or the post-termination review hearing." The current rule is silent as to a time frame for requesting consent. Further, there is no provision in the court rule to allow time for the MCI superintendent to make a decision as to whether consent will be granted. We propose that subsection (A)(3) be amended to strike the current language noted above and replace it with the following language. "The Department of Human Services shall request the consent of the MCI superintendent within 14 days of the completion of the home study. Upon receipt of the request for consent, the MCI superintendent shall grant or deny consent in writing within 42 days. The Department of Human Services shall file the consent with the court within 14 days of receipt of the consent from the MCI superintendent."

-**MCR 3.979(A)(3)(a)** addresses the procedure to be followed by a person or agency denied consent by the MCI superintendent, but provides no time frame for the filing of the motion requesting the court to review the superintendent's decision. We propose that this subsection be amended as follows: "If a person or agency denied consent believes that the decision to withhold consent by the MCI superintendent is arbitrary or capricious, the person or agency may file a motion with the court **within 56 days of receipt of the decision to deny consent.**"

-**MCR 3.979(C)** in its current proposed format provides, "The court's jurisdiction over a juvenile under section 2(b) of the Probate Code, MCL 712A.2(b) . . . shall be **terminated** after the court appoints a guardian under this section. . ." MCR 3.979(F)(5) provides, "Jurisdiction over the child under MCL 712A.2(b) is **reinstated** under the previous child protective proceeding upon entry of the order revoking the juvenile guardianship". It is our position that the current language may present a due process issue if the court automatically "reinstates" jurisdiction under MCL 712A.2(b) without the filing of a petition as is required under MCR 3.961. In order to avoid such an issue, we propose that the sentence regarding reinstatement of jurisdiction under section 2(b) be deleted and that the following language be added: "Within 24 hours of receipt of the order

revoking the juvenile guardianship, the Department of Human Services shall file a petition with the court under MCR 3.961, seeking that the court reassert jurisdiction over the child pursuant to MCL 712A.2(b). If, upon further investigation, the Department determines that the child's parent(s) can provide a suitable home for the child, the Department shall request that the petition be dismissed and that the child be returned to the legal custody of his or her parent(s). Should the court adopt this proposed change to the court rule, proposed MCR 3.979(F)(7) would have to be amended to delete the reference to MCR 3.973, since jurisdiction under MCL 712A.2(b) would have to be reasserted by the filing of a new petition as is required by MCR 3.961 et seq.

-MCR 3.979(D)(1) provides for an annual review of the juvenile guardianship. Because of the nature of these proceedings, it is our belief that the court should conduct a formal hearing rather than to rely only on a paper review. We propose that the current rule be amended to include the following language: "The court shall conduct a review of the juvenile guardianship annually. **The review shall consist of a formal hearing where the guardian shall appear before the court and provide a written report.**"

-MCR 3.979(F) outlines the procedure to be followed upon the revocation or termination of a juvenile guardianship, but does not address the procedure to be followed in the event that the guardian fails to file a report as is required by MCR 3.979(E)(1). We propose the addition of a subsection following MCR 3.979(F)(5) to address this contingency. The proposed language is as follows: "**Action following failure of the guardian to comply with MCR3.979(E)(1). If the guardian fails to file an annual report, the court shall direct the Department of Human Services to investigate the child's status. The court shall conduct a hearing to determine whether the juvenile guardianship shall continue or be revoked.**" We suggest that such an addition to this subsection along with our proposed requirement that the court conduct a formal review hearing will provide a safeguard to prevent children from "falling through the cracks" when their guardian is not complying with the court's requirements.